

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GREGORY GOULD,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

Civil Action No. 07-55 Erie

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on March 27, 2007 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 113], filed on January 16, 2010, recommended that the Defendants' motion for summary judgment [Doc. No. 91] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Plaintiff filed objections on February 4, 2010 [Doc. No. 114]. A Response to the Plaintiff's objections was filed by the Defendants on February 11, 2010 [Doc. No. 117]. On February 26, 2010, the Court held oral argument on the Plaintiff's objections.

After de novo review of the motion and documents in the case, together with the Report and Recommendation and objections thereto, and following oral argument on the Plaintiff's objections, the following order is entered:

AND NOW, this 3<sup>rd</sup> day of March, 2010;

The Court adopts the Report and Recommendation of the Magistrate Judge with respect to the Plaintiff's RLUIPA claim based on the December fast. JUDGMENT is hereby entered in favor of Defendants Jeffery Beard, Superintendent Wilson, Ulli Klemm and Superintendent Sobina and against the Plaintiff, Gregory Gould as to that claim.

The Court finds, however, that material issues of fact exist as to whether the

Plaintiff's exercise of religion relative to his claim based on separate worship services has been substantially burdened by the Department of Corrections. See Washington v. Klem, 497 F.3d 272, 283 (3<sup>rd</sup> Cir. 2007). This matter will be set down for a hearing limited solely to the issue as to whether the Plaintiff is entitled to injunctive relief relative to this claim.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge